

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

TRUE THE VOTE, *ET AL.*

PLAINTIFFS

V.

CIVIL ACTION NO.: 3:14cv532-NFA

THE HONORABLE DELBERT
HOSEMANN, in his official capacity
as Secretary of State for the State
of Mississippi, *ET AL.*

DEFENDANTS

**SECRETARY OF STATE DELBERT HOSEMANN'S OPPOSED
MOTION TO STRIKE DECLARATIONS AND INCIDENT REPORTS**

Delbert Hosemann, in his official capacity as Secretary of State for the State of Mississippi ("Secretary Hosemann"), files this motion to strike declarations and incident reports offered by plaintiffs, True the Vote, *et al.*, and submitted in support of their motion for partial summary judgment. [Dkt. 83]. Secretary Hosemann moves the Court for an order striking the following exhibits from plaintiffs' motion for partial summary judgment: [Dkt. 83-2, Exhs. 3, 3-A through 3-H; Exhs. 4, 4-A & 4-B]; [Dkt 83-3, Exhs. 5, 5-A through 5-D; Exhs. 6, 6-A & 6-B; Exhs. 7, 7-A]; [Dkt. 83-4, Exhs. 9, 9-A; Exhs. 10, 10-A through 10-F; Exhs. 11, 11-A & 11-B]; [Dkt. 83-5, Exhs. 12, 12-A through 12-D, Exh. 13].

These declarations and incident reports contain inadmissible hearsay under Rule 801(c) of the Federal Rules of Evidence ("FRE") and in some instances, contain hearsay within hearsay not meeting the criteria for admissibility under FRE 805. Rule 56(c)(4) of the Federal Rules of Civil Procedure requires that an affidavit or

declaration used to support or oppose a motion for summary judgment must set out the facts that would be admissible in evidence. The identified declarations and incident reports do not meet the standards for admissibility under the applicable rules of civil procedure or rules of evidence and should be stricken accordingly.

WHEREFORE, PREMISES CONSIDERED, Secretary Hosemann respectfully requests that the Court grant the motion to strike and exclude the declarations and incident reports from consideration of plaintiffs' motion for partial summary judgment.

This the 15th day of August, 2014

Respectfully submitted,

DELBERT HOSEMAN, in his
Official capacity as Secretary of State
for the State of Mississippi

By: JIM HOOD, ATTORNEY GENERAL

By: /S/ Harold E. Pizzetta, III
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*Counsel for Delbert Hosemann, in his
official capacity as Secretary of State
for the State of Mississippi*

CERTIFICATE OF CONFERENCE

On August 14, 2014 the undersigned counsel for Defendant, Delbert Hosemann, Secretary of State for the State of Mississippi (“Secretary Hosemann”), conferred via electronic mail with counsel for Plaintiffs. Counsel for Secretary Hosemann described the contents of this motion with counsel for Plaintiffs, specifically that Secretary Hosemann intended to move to strike certain exhibits, being declarations and incident reports, submitted by Plaintiffs in support of their motion for partial summary judgment. Counsel for Secretary Hosemann further advised counsel for Plaintiffs which exhibits he would move to strike from the motion for partial summary judgment. By return electronic mail on August 14, 2014, counsel for Plaintiffs indicated opposition to the motion. Thus, in order to preserve the objections raised in this motion and the record in this case, Secretary Hosemann is forced to file the opposed motion to strike.

/S/ Harold E. Pizzetta, III

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been filed with the Clerk of Court using the Court’s ECF system and thereby served on all counsel of record who have entered their appearance in this action to date.

/S/ Harold E. Pizzetta, III

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DEFENDANTS

ORDER GRANTING MOTION TO STRIKE

THIS DAY there came on for hearing, Delbert Hosemann, in his official capacity as Secretary of State for the State of Mississippi's Motion to Strike exhibits submitted by Plaintiffs, True the Vote, *et al.*, in support of their motion for partial summary judgment. Having considered the motion, and having reviewed the briefs of the parties, the Court finds that the motion is well-taken and should be granted.

IT IS, THEREFORE, ORDERED AND ADJUDGED that Delbert Hosemann, in his official capacity as Secretary of State for the State of Mississippi's Motion to Strike is **GRANTED**.

THIS the___ day of August, 2014.

HONORABLE NANCY F. ATLAS
UNITED STATES DISTRICT COURT JUDGE

Submitted by:

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